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4.5.2012 shown in red

LOCAL GOVERNMENT ACT 1995

SHIRE OF KALAMUNDA

KEEPING AND CONTROL OF ANIMALS AND NUISANCE LOCAL LAW 2011

Under the powers conferred by the Local Government Act 1995 and under all other powers, the Council of the Shire of Kalamunda resolved on 15 August 2011 to make the following local law.

PART 1—GENERAL

1.1. Citation

This local law may be cited as the *Shire of Kalamunda Keeping and Control of Animals and Nuisance Local Law 2011*.

1.2. Application

This local law shall apply throughout the district.

1.3. Commencement

This local law comes into operation 14 days after the date of its publication in the Government Gazette.

1.4. Repeal

The Shire of Kalamunda Sand Drift and Litter Control Local Law 2006 published in the Government Gazette on 30 January 2007 is repealed.

PART 2—INTERPRETATION

2.1. Interpretation

In this local law, unless the context otherwise requires—

Act means the *Local Government Act 1995*;

authorised officer means a person appointed by the local government, under section 9.10 of the Act to administer or enforce this local law;

cattery means a place where more than 3 cats are kept for the purposes of boarding or more than 6 cats are kept for the purpose of breeding;

district means the district of the Local Government;

dust means any visible granular or particulate material which has the potential to become airborne and includes organic and non-organic matter and sand, but does not include smoke;

land includes any building or other structures on the land;

litter includes—

- (a) all kinds of rubbish, refuse, junk, garbage or scrap; and
- (b) any article or material abandoned or unwanted by the person or owner last in possession;

local government means the Shire of Kalamunda;

lot has the meaning given to it in the *Planning and Development Act 2005*;

Manager Health Service means an environmental health officer appointed by the local government to the office of Manager Health Service and includes an Acting Manager Health Service;

nuisance includes—

- (a) an activity or condition which is harmful, vexatious or annoying and which gives rise to or is likely to give rise to legal liability in the tort of public or private nuisance at law;
- (b) an unreasonable or unlawful interference with the use and enjoyment of any person in her or his—
 - (i) ownership or occupation of land; or
 - (ii) use of a public place.
- (c) interference which causes damage to land or other property on the land affected by the interference;

occupier includes any person who, at the time a notice is served, is in control of any land or part of any land or authorised by the owner, lessee, licensee or any other person empowered to exercise control in relation to any land to perform any work in relation to any land and may include a builder or contractor;

residential land means any land zoned residential, residential bushland, urban development or any other zone intended for residential purposes under a local planning scheme;

sand means granules or particles of rock, earth, clay, loam, silt and any other granular, particulate or like material, including organic matter, dust and gravel;

site means land in the district upon which any earthworks, building works, construction, development or subdivisional works are occurring;

transitional period means a period of 6 months starting from the date of commencement of this local law.

PART 3—NUISANCES

3.1. Escape of smoke, sand, odour or liquid waste

An owner or occupier of land shall ~~not cause or permit~~ **take reasonable and effective measures to prevent** the escape of smoke, sand, odour or liquid waste from the land in such quantities or in such a manner as to cause a nuisance to any person.

3.2. Wind blown sand on building sites

An owner or occupier of land shall ~~not cause or permit~~ **take reasonable and effective measures to prevent** sand or dust ~~to be being~~ released or ~~to escape~~ **escaping** from such land, whether by means of wind, water or other causes, onto adjoining or nearby land so as to cause a nuisance.

3.3. Litter control on building sites

(1) An owner or occupier of land shall, prior to the commencement of any building works on such land, provide on the land—

- (a) a bin or wire enclosure of a capacity not less than 4 cubic metres; or
- (b) an alternative receptacle approved by the Manager Health Service, for the disposal of all litter from the building works.

(2) An owner or occupier of land shall ensure—

- (a) all litter from any building works undertaken on the land is placed and kept secure in the receptacle provided in accordance with sub-clause (1); and
- (b) the refuse receptacle is emptied when full.

3.4. Burning of rubbish, refuse or other material

(1) An owner or occupier of land shall not set fire to or allow to be set on fire any rubbish, refuse or material other than dry green waste, without the written approval of the local government.

(2) Approval for the burning of rubbish, refuse or material other than dry green waste shall only be granted by the local government where—

- (a) the owner or occupier demonstrates to the satisfaction of the local government that reasonable alternatives for the disposal of the rubbish, refuse or other material do not exist and the potential for pollution is low;
- (b) the material does not include any plastic, rubber, food scraps, ~~green garden materials~~ or other material likely to cause the generation of smoke or odour in such quantity as to cause a nuisance to other persons;
- (c) a haze alert has not been issued by the Bureau of Meteorology for the period during which burning is to take place; and
- (d) the burning complies with the Bush Fires Act 1954 and any annual fire hazard reduction notice issued by the local government under that Act.

(3) A person granted approval pursuant to sub-clause (2) shall comply with any conditions to which such approval is made subject.

(4) Sub-clause (1) shall not apply to any barbeque, solid fuel water heater, space heater or ovens fired with dry paper, dry wood, synthetic char or charcoal type fuel.

PART 4—KEEPING OF ANIMALS
Division 1: General

4.1. Interpretation

In this Part, unless the context otherwise requires—

animal includes any large animal, dog, cat, **restricted poultry**, poultry and pigeons;
flies means any of the two-winged insects constituting the order Diptera commonly known as flies;
large animal includes a horse, cow, pig, sheep, goat, camel, deer, alpaca, lama, emu, ostrich, kangaroo, ox, ass, mule, donkey or pony;
large residential lot means any residential land comprising a lot with an area greater than 2,000 square metres;
medium residential lot means any residential land comprising a lot with an area not less than 600 square metres and not more than 2,000 square metres;
mosquitoes means any of the two-winged insects constituting the family Diptera Culicidae commonly known as mosquitoes;
pest includes rodents, flies, mosquitos, cockroaches and wild pigeons;
pigeons includes homing pigeons and other domesticated breeds of the species *Columba livia*, but does not include native pigeons or doves, whether or not the keeping of such birds is subject to the approval of the Department of Environment and Conservation;
poultry includes fowl, ducks and other domestic fowl, but excludes restricted poultry;
restricted poultry includes roosters, peafowl, turkeys and geese;
rodents means those animals belonging to the order Rodentia and includes rats and mice but does not include animals kept as pets in an enclosure designed for the purpose of keeping as pets animals of that kind; and
small residential lot means any residential land comprising a lot with an area less than 600 square metres.

4.2. Animals not to create a nuisance

The owner or occupier of land where an animal is kept shall keep the animal in such a manner so as not to cause a nuisance and keep the land—

- (a) free from excrement, food waste and all other matter likely to become or create a nuisance or to attract or breed pests; and
- (b) so far as practicable, free of pests and vectors of disease.

4.3. Animals to be prevented from roaming

(1) An owner or occupier of a lot on which an animal is kept shall, prevent any such animal from wandering onto any other lot.

(2) Sub-clause (1) shall not apply to a cat, a dog or a registered homing pigeon freed for exercise.

4.4. Application for approval to keep animals

An application for approval of the keeping of animals required under this Part shall include the following—

- (a) a plan of the property, at a scale not less than 1:200, with dimensions clearly marked, showing where it is proposed that the animal is to be kept and the distance of that location from any building on an adjoining lot;
- (b) a sketch plan, at a scale of 1:100, indicating the nature of the enclosure or housing to be provided for the animal;
- (c) a detailed plan for the management of waste, pests and odour related to keeping of the animal;
- (d) the appropriate application and permit fees as determined from time to time by the local government in accordance with Sections 6.16 to 6.19 of the Act; and
- (e) any other information reasonably required by the local government for determination of the application.

4.5. Determination of application for approval

(1) In determining whether to approve an application to keep animals under this Part the local government shall have regard to—

- (a) the physical suitability of the premises for the proposed use;
- (b) the likelihood of the animals causing a nuisance, inconvenience or annoyance to the occupiers of adjoining land;
- (c) whether the animal is to be housed in such a manner as to minimize noise nuisance to surrounding properties;
- (d) the likelihood and possible extent of environmental damage which may be caused by keeping of the animals;
- ~~(e) whether the proposed use will be conducted in accordance with any relevant Industry Codes of Practice or Australian Standards;~~
- (ef) the applicant's previous experience and history in respect of the keeping of animals;
- (fg) the provisions of this local law; and
- (gh) such other factors which the local government may consider to be relevant in the circumstances of the particular case.

(2) The local government may—

- (a) refuse to determine an application for approval which does not comply with clause 4.4;
- (b) approve an application for approval subject to such conditions as it considers appropriate; or
- (c) refuse to approve an application for approval.

(3) Where an application for approval is approved subject to conditions, the applicant shall comply with those conditions.

(4) The local government may by written notice revoke an approval granted pursuant to sub-clause (2) where the approval holder fails to comply with a condition of approval or any provision of this local law.

Division 2: Keeping of birds

4.6. Keeping of poultry and pigeons on residential land

- (1) An owner or occupier of land may, without obtaining approval of the local government, but subject to the provisions of this local law keep—
- (a) no more than a combined total of 6 poultry or pigeons on a medium residential lot;
 - (b) no more than a combined total of 20 poultry or pigeons and 1 restricted poultry on a large residential lot.
- (2) An owner or occupier of land shall not keep—
- (a) any poultry, pigeons or restricted poultry on a small residential lot;
 - (b) more than a combined total of 6 poultry or pigeons on a medium residential lot;
 - (c) any restricted poultry on a medium residential lot;
 - (d) more than a combined total of 20 poultry or pigeons on a large residential lot; or
 - (e) more than 1 restricted poultry on a large residential lot, without first obtaining approval of the local government.
- (3) For the purposes of this clause, the number of poultry kept does not include any poultry chicks less than 3 months in age.

Division 3: Keeping of cats

~~4.7. Keeping of more than 3 cats prohibited~~

~~No person shall keep more than 3 cats on any land within the district, unless for the purpose of—(a) breeding; or
(b) maintaining a cattery in accordance with clause 4.8.~~

4.7 Keeping of cats

- (1) A person may keep up to 3 cats without obtaining approval of the local government.
- (2) A person shall not keep more than 3 cats unless—
- (a) it is for the purpose of boarding or breeding ; and
 - (b) the person has the approval from the local government in accordance with clause 4.8.
- (3) For the purpose of this clause, the number of cats kept does not include any cats less than 6 months in age.

~~4.8. Keeping of more than 3 cats for the purpose of breeding or a cattery~~

- ~~(1) An owner or occupier of land may keep up to 6 cats over the age of 4 months for the purpose of breeding provided that—~~
- ~~(a) the approval of the local government is first obtained pursuant to clause 4.5; and~~
 - ~~(b) each cat is permanently confined within such land in an effective caged system.~~
- ~~(2) An owner or occupier of land may—~~
- ~~(a) keep more than 3 cats over the age of 4 months for the purposes of boarding; or~~
 - ~~(b) more than 6 cats over the age of 4 months for the purposes of breeding, provided the owner or occupier first obtains written approval of the local government to register a cattery under clause 4.10.~~

4.8 Keeping of more than 3 cats for the purpose of breeding or boarding

(1) An owner or occupier of land who intends to keep more than 3 cats and not more than 6 cats for the purpose of breeding must first obtain approval of the local government in accordance with clause 4.5.

(2) An owner or occupier of land who intends to keep more than 3 cats for the purpose of boarding or more than 6 cats for the purpose of breeding, must first obtain approval of the local government to register a cattery in accordance with clause 4.10.

4.9. Application for registration of a cattery

An application for registration of a cattery shall—

- (a) be made in writing by the owner or occupier of the premises to which the registration will relate;
- (b) identify the proposed operator of the cattery;
- (c) be accompanied by—
 - (i) the application fee as fixed from time to time by the local government under section 6.16 of the Act; and
 - (ii) detailed plans and specifications of the cattery to which the application relates.
- (d) such other information as may be reasonably required by the local government for determination of the application.

4.10. Determination of application for registration of a cattery

(1) In determining an application under clause 4.9, the local government shall have regard to the matters set out in clause 4.5(1) to the extent they relate to the registration and operation of the proposed cattery.

(2) The local government may—

- (a) approve, with or without conditions, an application under clause 4.9 by issuing to the applicant a certificate of registration in the form of Schedule 1; or
- (b) refuse to approve the registration.

(3) A certificate of registration granted pursuant to sub-clause (2)(a) is only valid for the period stipulated in the certificate of registration, unless renewed in accordance with clause 4.11.

4.11. Renewal of registration

A person who keeps and intends to continue to keep a cattery which is registered under this Part shall—

- (a) during the month of June in each year apply to the local government for renewal of the registration of the cattery; and
- (b) pay the fee as fixed from time to time by the local government under section 6.16 of the Act at the time of making each application for renewal.

4.12. Registration may be revoked

(1) A certificate of registration granted by the local government may be revoked if the person to whom the certificate was granted—

- (a) ceases to operate the cattery or be the occupier of the lot in respect of which registration was granted;
 - (b) fails to comply with a condition of the approval;
 - (c) fails to renew the registration in accordance with clause 4.11.
- (2) Where the local government revokes a certificate of registration pursuant to sub-clause (1) it shall provide written notice of such revocation to the person to whom the certificate was originally granted.

4.13. Standards for enclosure or shelter

The occupier of premises upon which a registered cattery is situated shall provide a properly constructed shelter for each cat within an enclosure constructed in the following manner—

- (a) each shelter shall have a floor area of not less than 0.5 square metres for any cat over the age of 4 months old;
- (b) the area of the enclosure appointed to any shelter or group of shelters forming a cattery shall not be less than 3 times the area of the shelter or group of shelters; and
- (c) no shelter or enclosure shall be closer than 10 metres from a lot boundary or any other building situated on the lot, unless otherwise approved by the local government.

Division 4: Transitional provisions

4.14. Transitional period

Notwithstanding any other provision of this local law, an owner or occupier of land upon which any animal was kept at the commencement of this local law may continue to keep that animal without local government approval for the duration of the transitional period.

PART 5—ENFORCEMENT

5.1. Notice of breach

- (1) Where a breach of any provision of this local law has occurred, the local government may give a notice in writing to the person alleged to be responsible for such a breach.
- (2) A notice issued pursuant to sub-clause (1) shall—
- (a) specify the provision of this local law which has been breached; (b) specify the particulars of the breach; and
 - (c) state the manner in which the recipient is required to remedy the breach to the satisfaction of the local government within a time period stipulated in the notice which shall be not less than 7 days from the giving of the notice.
- (3) It is an offence to fail to comply with a notice issued by the local government pursuant to sub-clause (1).

5.2. Form of notices

Where this local law refers to the giving of a notice, other than the giving of an infringement notice and no particular form is prescribed, it will be sufficient that the notice be in writing giving sufficient details to enable the owner, occupier or other person to whom the notice is issued to know the offence committed and the measures required to be taken or conditions with which compliance is required, as the case may be.

PART 6—OFFENCES AND PENALTIES

6.1. Offences and penalties

(1) Any owner or occupier who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.

(2) Any owner or occupier who commits an offence under this local law shall be liable, upon conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

6.2. Infringement and infringement withdrawal notices

For the purposes of this local law—

(a) the form of the infringement notice referred to in section 9.17 of the Act is Form 2 in Schedule 1 of the Local Government (Functions and General) Regulations 1996; and

(b) the form of the withdrawal of infringement notice referred to in section 9.20 of the Act is Form 3 in Schedule 1 of the Local Government (Functions and General) Regulations 1996.

6.3. Modified penalties

(1) An offence against a clause specified in Schedule 2 is a prescribed offence for the purposes of section 9.16(1) of the Act.

(2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 2.

(3) For the purpose of guidance only, before giving an infringement notice to a person in respect of the commission of a prescribed offence, an authorised person should be satisfied that—

(a) commission of the prescribed offence is a relatively minor matter; and

(b) only straightforward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issue are readily ascertainable.

6.4. Prosecution for offences

A penalty for an offence against this local law may be recovered by the local government by taking proceedings against the alleged offender in a court of competent jurisdiction.

6.5. Records to be kept

The local government shall cause adequate records to be kept of all infringement notices served and modified penalties received.

PART 7—OBJECTIONS AND APPEALS

7.1. Objections and appeals

When the local government makes a decision under this local law as to whether it will—

- (a) grant an approval or certificate of registration;
- (b) vary or revoke an approval or registration; or
- (c) give a person a notice;

the provisions of Division 1 of Part 9 of the Act and regulation 33 of the Local Government (Functions and General) Regulations 1996 shall apply to that decision.

Schedule 1
 CERTIFICATE OF REGISTRATION
 (Clause 4.10)
 LOCAL GOVERNMENT ACT 1995
Shire of Kalamunda
 Keeping and Control of Animals and Nuisance Local Law 2011

CERTIFICATE OF REGISTRATION OF A CATTERY
 This is to certify that the following cattery

.....
 located at

 operated by

is registered in accordance with clause 4.10(2)(a) of the Shire of Kalamunda Keeping and Control of Animals and Nuisance Local Law 2011.

This registration is valid until 30 June and is subject to compliance with the following conditions—

- 1.

Manager Health Service
 Dated:

Schedule 2
OFFENCES AND MODIFIED PENALTIES
(Clause 6.3)

Clause	Offence	Penalty \$
3.1	Causing or permitting the escape of smoke, sand, odour or liquid waste from the premises as to cause a nuisance.	100
3.2	Causing or permitting sand or dust to be released or escape from premises so as to cause a nuisance	200
3.3 (1)	Failure to provide a suitable bin or wire enclosure or approved receptacle on a building site	400
3.3(2)	Failure to keep litter from building works in bin, wire enclosure or approved receptacle.	400
3.4(1)	Setting on fire to or causing or allowing to be set on fire any rubbish, refuse or material other than dry green-waste, without the written approval of the local government.	100
4.2(a)	Failing to keep premises free from excrement, food waste and all other matter likely to create a nuisance or to attract pests.	100
4.2b	Failing to keep the premises, so far as practicable, free of pests and vectors of disease.	200
4.3(1)	Failing to prevent animals from wandering onto other land or premises.	100
4.6(2)(a)	Keeping poultry, pigeons or restricted poultry on a small residential lot without approval	100
4.6(2)(b)	Keeping more than a combined total of 6 poultry or pigeons on a medium residential lot without approval.	100
4.6(2)(c)	Keeping any residential poultry on a medium residential lot without approval.	100
4.6(2)(d)	Keeping more than a combined total of 20 poultry or pigeons on a large residential lot without approval.	100
4.6(2)(e)	Keeping more than 1 restricted poultry on a large residential lot without approval.	100
4.7(2)	Keeping of more than 3 cats otherwise than in accordance with clause 4.8.	100
4.13	Failing to provide a properly constructed shelter or enclosure in a cattery.	200
5.1(3)	Failing to comply with a notice issued under clause 5.1(1).	100
—	Any other offence not specified	100

Dated: 23 August 2011.

The Common Seal of the Shire of Kalamunda was placed here in the presence of—
DONALD McKECHNIE, Shire President. JAMES TRAIL, Chief Executive Officer